MIDVALLEY CITY SDN BHD & ANOR

v.

AKITEK TENGGARA SDN BHD

COURT OF APPEAL, PUTRAJAYA
ABDUL KADIR SULAIMAN JCA
HASHIM YUSOFF JCA
TENGKU BAHARUDIN SHAH JCA
[CIVIL APPEAL NO: W-02-384-99]
22 AUGUST 2005

PROFESSIONS: *Architects - Claim for balance of professional charges - Whether validity of appellants' termination of respondent architect's services considered and determined in previous judgment of Supreme Court - Whether appellants had right to terminate respondent's services - Whether matter clearly res judicata - Whether court bound by order of Supreme Court*

CIVIL PROCEDURE: *Res judicata - Application of doctrine - Finality of earlier decision - Respondent architect claiming balance of professional charges for actual work done under employment contract - Whether validity of appellants' termination of respondent's services considered and determined in previous judgment of Supreme Court - Whether matter clearly res judicata - Whether court bound by order of Supreme Court*

CONTRACT: *Employment contract - Termination - Respondent architect claiming balance of professional charges for actual work done under employment contract - Whether validity of appellants' termination of respondent's services considered and determined in previous judgment of Supreme Court - Whether appellants had right to terminate respondent's services - Whether matter clearly res judicata - Whether court bound by order of Supreme Court*

CONTRACT: *Damages - Employment - Respondent architect claiming balance of professional charges for actual work done under employment contract - Principles applicable - Whether trial judge made an entirely erroneous estimate of damages - Whether respondent only entitled to claim a reasonable charge for work done till date of termination - Whether award made by trial judge ought to be set aside*

The respondent, who had been appointed as the architect for a proposed development project pursuant to a letter dated 14 June 1984 ('the contract') and subsequently discharged by the appellants on 1 November 1988, had maintained that his discharge was bad in law and of no effect. He refused to give a letter of release for the appointment of new architects by the appellants for the new project. The matter was referred to Lembaga Akitek Malaysia-Pertubuhan Akitek Malaysia ('LAM/PAM') which decided that the appellants had the right to terminate the services of the respondent with or without assigning any reason. The requirement for a letter of release from the respondent was waived and the appellants were at liberty to appoint another architect. The respondent was dissatisfied with the LAM/PAM decision and commenced *certiorari* proceedings in the High Court to quash that decision. The High Court quashed the LAM/PAM decision; the LAM/PAM appealed to the Supreme Court, which unanimously set aside the order of the High Court and affirmed the LAM/PAM decision ('the Supreme Court Order').

The respondent then filed an action in the High Court against the appellants claiming the sum of RM2,031,568, being the balance of the professional fees and disbursements due to him for actual work done under the contract as at the date of termination plus interest and costs. The respondent then re-amended the statement of claim to include a new claim for the sum of RM7,705,382 and after a full trial, the High Court found in favour of the respondent for the full sum of RM7,705,382 together with interest at the rate of 4% per annum from 1 November 1988 until 11 May 1999 and costs as claimed by the respondent in the re-amended statement of claim. Hence, this appeal by the appellants against the said High Court decision. The two main issues requiring determination were: (i) whether the appellants could terminate the respondent's services under the contract; and (ii) the amount of damages to be awarded to the respondent.

Held (allowing the appeal):

[1] Upon careful scrutiny of the appeal record before the Supreme Court which was found in the supplementary appeal record, it was clear that the issue of the validity of the appellants' termination of the respondent's services under the contract was considered and determined by the High Court and the Supreme Court. The effect of the Supreme Court Order was that the LAM/PAM decision was restored and was, hence, valid and binding on the parties. Therefore, the respondent's submission that the Supreme Court Order only dealt with the issue of the letter of release and did not deal with the issue of whether the appellants had the right

to terminate the respondent's services under the contract, was rejected. The matter was clearly now *res judicata* and it could not be re-opened and re-litigated by the parties or their privies. Hence, the finding of the trial judge that the appellants' termination of the respondent was unlawful as the respondent was not in breach of any of the terms of the contract, was set aside. This court was also clearly bound by the Supreme Court Order upholding and affirming the LAM/PAM decision, rendering it unnecessary to deal with the various cases referred to and the submission as to whether the project was aborted, abandoned or delayed indefinitely. (pp 113 f-h, 114 a-g & 115 a-b)

[2] The principal basis upon which the trial judge awarded the sum of RM7,705382 as losses suffered or the respondent's loss of profits was based on his finding that the contract was unlawfully terminated and that it was an entire contract. In light of this court's interpretation and finding that the Supreme Court Order had already dealt with the termination of the contract, the learned judge's basis and foundation for the award of damages or loss of profits of RM7,705,382 could not be sustained in law. Therefore, the trial judge had acted on a wrong principle or had made an entirely erroneous estimate of the damages. Thus, the award of RM7,705,382 made by the trial judge was set aside. (pp 115 h & 116 a-b)

[2a] Since the Supreme Court Order had determined that the appellants had the right to terminate the respondent's services with or without assigning any reason, the respondent was only entitled to claim a reasonable charge for the work done up till the date of termination. Accordingly, the respondent was entitled to be paid all the fees for work done up to the date of termination, which was the sum of RM2,006,373. Since there was no dispute that the appellants had paid the respondent the sum of RM2,000,000 pursuant to the judgment of the High Court, the appellants were ordered to pay the respondent the balance sum of RM6,373 together with interest thereon at the rate of 8% per annum from 11 May 1999 until the date of full realisation. The appellants were also ordered to pay the respondent interest at the date of 8% per annum on the sum of RM2,000,000 from 11 May 1999 until the date the sum was paid to the respondent *ie*, 15 July 1999. The appellants were awarded costs both in this court and in the court below. (p 118 c-g)

[Order accordingly.]

Case(s) referred to:

Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783 SC ***(foll)***

Co-operative Central Bank Ltd v. Feyen Development Sdn Bhd [1997] 3 CLJ 365 FC ***(foll)***

Mahmod Kailan v. Goh Seng Choon & Anor [1976] 2 MLJ 239 ***(foll)***

Mid Valley City Sdn Bhd & Anor v. Akitek Tenggara Sdn Bhd [2002] 4 CLJ 286 CA

Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn Bhd [1994] 3 MLJ 777 ***(foll)***

Legislation referred to:

Architects Rules 1973, r. 7

Rules of the High Court 1980, O. 53 r. 1(2)

For the appellants - V Sivaparanjothi (Wong Kee Them with him); M/s V Siva & Partners

For the respondent - Manjit Singh (Porres Royan & Leonard D'cruz with him); M/s Sri Ram & Co

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S2-22-454-91]

Reported by Suresh Nathan

JUDGMENT

Abdul Kadir Sulaiman JCA:

We had on 25 September 2004 allowed the appellants' appeal and made other consequential orders. We now give our reasons for doing so.

We will first state the brief facts leading to this appeal. The respondent was appointed as the architect for the proposed development known as Bandar Syed Putra Project. The terms of the appointment were set out by the respondent in a letter dated 6 April 1984 addressed to Bandar Incorporated Development Sdn. Bhd. ("BIDSB"). On 14 June 1984 BIDSB accepted the terms of the appointment as stated in the letter dated 6 April 1984 ("the contract"). About 15 July 1988 the second appellant acquired a majority stake in BIDSB.

The appellants had by letter dated 1 November 1988 discharged the respondent as the architect for the proposed Bandar Syed Putra Project. This resulted in a series of exchange of correspondences between the appellants and the respondent. The upshot of this was that the respondent refused to give a letter of release for the appointment of new architects by the appellants for the new project. The respondent maintained that his discharge by the appellants was bad in law and of no effect.

Subsequently the matter was referred to Lembaga Akitek Malaysia – Pertubuhan Akitek Malaysia (Board of Architects Malaysia – Malaysian Institute of Architects) also commonly referred to as LAM/PAM. On 14 March 1989 the Joint LAM/PAM Practice Committee made a decision which was communicated to the parties *vide* its letter dated 15.03.1989. We will in this judgment refer to this as the LAM/PAM decision. The LAM/PAM decision held that the appellants had the right to terminate the services of the respondent with or without assigning any reason. The requirement for a letter of release from the respondent was waived and the appellants were at liberty to appoint another architect and it was for the new architect to accept the appointment.

The respondent was dissatisfied with the LAM/PAM decision and commenced *certiorari* proceedings in the High Court on 10 June 1989 to quash the said decision. On 5 March 1990 the High Court quashed the LAM/PAM decision ("High Court Order"). The LAM/PAM being dissatisfied with the High Court Order appealed to the Supreme Court.

On 13 November 1990, the Supreme Court unanimously set aside the High Court Order thus affirming the LAM/PAM decision ("the Supreme Court Order"). After the Supreme Court Order, the respondent filed an action in the High Court on 11 October 1991 against the appellants claiming for a sum of RM2,031,568 being the balance professional fees and disbursements due to him for actual work done under the contract as at the date of termination plus interest and costs.

When the trial commenced on 16 April 1997 the High Court allowed an oral application by the respondent to re-amend the statement of claim to include a new claim for the sum of RM7,705,382. This order was made despite objections from the appellants.

After a full trial, the High Court gave judgment in favour of the respondent for the full sum of RM7,705,382 together with interest at the rate of 4% per annum from 1 November 1988 until 11 May 1999 and costs as claimed by the respondent in the re-amended statement of claim. The High Court judgment is reported in [1999] 2 MLJ 625. Hence this appeal by the appellants to the Court of Appeal against the said High Court decision.

On 1 October 2001 the appellants had obtained leave from a differently constituted panel of the Court of Appeal to adduce fresh evidence at the hearing of this appeal before us. Under this Court of Appeal Order, the appellants were ordered to file and serve a supplementary appeal record containing a sealed copy of the High Court Order dated 11 May 1999, to amend the memorandum of appeal and to introduce the following fresh documents:

(i) a copy of the approved layout plan dated 17 June 1997;

(ii) the letter dated 8 December 1998 from Dewan Bandaraya Kuala Lumpur granting approval for the development plans;

(iii) a copy of all cause papers and the notes of proceedings in the High Court of Malaya at Kuala Lumpur in respect of the Originating Motion No. R8-25-46-1989;

(iv) the order of the Supreme Court dated 13 November 1990 in respect of the Supreme Court Civil appeal No 02-124-1990; and

(v) all relevant cause papers together with the Record of Appeal in the Supreme Court Civil Appeal No. 02-124-1990.

This decision of the Court of Appeal is reported in [2002] 4 CLJ 286. The respondent then applied for leave to appeal to the Federal Court against the said decision of the Court of Appeal to admit the fresh evidence at the hearing of this appeal before us. On 18 November 2002 the Federal Court dismissed the respondent's application for leave to appeal.

In the appeal before us there were two main issues which lay at the heart of the appeal. They were also canvassed in the court below, although in a slightly different form. We can conveniently summarize them as follows:

a) Whether the appellants can terminate the respondent's services under the contract;

b) What is the amount of damages to be awarded to the respondent?

First Issue

Whether the appellants can terminate the respondent's services under the contract?

The trial judge had dealt with the issue of the termination of the respondent's services under the contract. He held that there was no express stipulation in the contract for the appellants to terminate the respondent's services. He also found that there was no implied right given to the appellants to terminate the contract. He then concluded that the appellants termination of the respondent was unlawful as the respondent was not in breach of any of the terms of the contract. (appeal record volume 1 at pp. 34 to 37).

Before us the appellants' counsel attacked the finding of the trial judge on the issue of termination of the contract. He submitted that the Supreme Court had already decided with finality that the appellants can terminate the services of the respondent with or without assigning any reason. The trial judge was bound by the Supreme Court Order and he cannot make a finding inconsistent with the Supreme Court Order. He further submitted that every architect was subject to the Architects Act 1967 and the Architects Rules 1973. Rule 7 of the Architects Rules 1973 expressly provides that the respondent's services as an architect may be terminated at anytime by either party upon reasonable notice being given.

The respondent's counsel submitted before us that the trial judge had made a correct finding on the issue of termination of the respondent's service under the contract. He submitted that there was no termination clause provided in the contract. It was a contract for the respondent to render services for the whole project from commencement to completion without any termination clause expressed therein. It was an entire contract and the fees payable was a lump sum fee. On the issue of the Supreme Court Order he submitted that the parties in the Supreme Court appeal were different and the Supreme Court only dealt with the issue of the letter of release. The Supreme Court Order did not deal with the issue whether the appellants had the right to terminate the respondent's services. He further submitted that the Architects Rules 1973 were not applicable unless they have been expressly incorporated in the contract. Alternatively even if r. 7 of the Architects Rules was applicable, the appellant did not give any notice at all leave alone reasonable notice. Since the appellants had failed to give such notice, they were therefore in breach of the contract.

In order to appreciate this issue we must first examine the terms of appointment in the letter dated 6 April 1984. It is as follows:

> Akitek Tenggara Sdn. Bhd.
> Tower/R/25/1 Tingkat 25, Bangunan Pernas,
> Jalan Raja Laut
> Kuala Lumpur
> 01-04 Malaysia
> Tel: 935322
>
> Singapore Blk 162,
> Bukit Merah Central 08-3535. Singapore 0315
> Tel: 2725972. Fax: 2725004. Tel Fax: RS 36721 AKITEN
> (Peti Surat Bangunan Pernas No. 23)

a AT/M73/2/OTS/jp

Malaysia 6th April 1984

Bandar Incorporated Development Sdn. Bhd.
105, Jalan Sungei Besi
b Kuala Lumpur
Attention: Mr Lim Pak Tow

Dear Sir,

c PORPOSED COMPREHENSIVE DEVELOPMENT AT JALAN PENGHULU MAT, (OFF FEDERAL HIGHWAY), KAMPUNG HAJI ABDULLAH HUKUM, KUALA LUMPUR

We wish to thank you for our appointment as your architect for the above project, and would be grateful if you would confirm the following terms of our appointment.

d 1. Fees

Our fees shall be 4% of total building cost for the 1st block and 2% of total building cost for the subsequent repetitive blocks. Over and above, we shall also be paid 1% of the total infrastructure cost. However, the fee for residential units for Dewan Bandaraya shall be lump sum, that is $300.00 per unit for medium
e low and low cost and $600.00 per unit for medium cost flats as stipulated in your letter dated 5th January 1984.

The fee will be initially computed on estimates of building and infrastructure cost and to be adjusted according to final account on completion of project or part of project by phases.

f 2. Mode of Payment

The mode of payment to us shall be as agreed:

g 1. A monthly sum of $20,000.00 as part of the fees for the initial stage to the completion of schematic design phase to enable the engineers to commence their structural design work.

Total to be paid	–	10%
2. Design Development Phase	–	10%
h 3. Contract Document Phase	–	10%
4. Contract Management Phase will be spread over in equated over the contract management period.	–	60%

i

5. On completion of the whole building and obtaining Certificate of Fitness – 10%

3. Abortion/Abandonment/Delay

If the project is aborted, abandoned or delayed indefinitely, the fees computed to the nearest stage of work is payable.

4. Documentation

The architect will supply the client with two (2) complete sets of as-constructed drawings on completion of the project without charge.

All other direct costs such as printing charges, authorities' fees, etc. are to be reimbursed separately.

Kindly endorse on the attached copy and return the same to us to signify your agreement to the above terms.

Thank you.

Yours faithfully,
AKITEK TENGGARA SDN. BHD.

SGD

Ooi Teong Siong

To: AKITEK TENGGARA SDN. BHD.

We agree to the above terms of appointment of the architect with the provision as stated in our letter BID/ATS/005 dated 14.6.1984.

BANDAR INCORPORATED DEVELOPMENT SDN. BHD.

- SGD - Date 14/6/84
Director
Signature & Company Stamp

cc: ATS

We find that the contract does not contain any express clause for the appellants to terminate the services of the respondent or for that matter for the respondent to terminate its services with the appellants. We now examine the effect of the Supreme Court Order. There is no dispute by the parties that the LAM/PAM decision gave rise to the High Court Order and subsequently to the Supreme Court Order. The LAM/PAM decision communicated to the parties by its letter of 15 March 1989 was in the following terms:

LEMBAGA AKITEK MALAYSIA –
PERTUBUHAN AKITEK MALAYSIA
(BOARD OF ARCHITECTS MALAYSIA –
MALAYSIAN INSTITUTE OF ARCHITECTS)
Tingkat 2, Blok C, Cawangan Bangunan,
Ibu Pejabat JKR, Jalan Tun Ismail,
Peti Surat 12695,
50786 Kuala Lumpur

Telefon No : 2982878
Rujukan Tuan : Cc/jm/201/88
Rujukan Kami : Bil.(72) dlm. LAM A/O 19

Tarikh: 15 March 1989

Christina Chia & Partners
Advocates & Solicitors
Suite 4006, President House
Jalan Sultan Ismail
50250 Kuala Lumpur

Dear Madam,

BANDAR SYED PUTRA DEVELOPMENT PROJECT

Your letter of 7 March 1989 and all pertinent documents were reviewed at the meeting of the Joint LAM/PAM Practice Committee held on 14 March 1989 and when the following decisions were taken:

1. That there is no question that Bandar Incorporated Development Sdn Bhd has the right to terminate the services of Akitek Tenggara Sdn Bhd and to be able to do so with or without assigning any reason.

2. Thus as provided in Clause 17 of the Fourth Schedule (Rule 28) Part One – Conditions of Engagement of an Architect, Akitek Tenggara Sdn Bhd was obliged to submit their accounts for the balance of fees due together with any other outstanding claims for reimbursable charges not later than 30 days from the date of expiry of the notice of termination of the agreement. In this regard, Bandar Incorporated Development Sdn. Bhd's letter dated 26 January 1989 left no doubt over the intent of their earlier letter dated 1 November 1988 which view was supported by Mr Tan Eng Keong and the undersigned at the meeting held on 23 February 1989. Hence, Akitek Tenggara Sdn. Bhd. was required by this provision of the Architects Rules 1973 to have submitted their accounts well before now.

3. Therefore if Akitek Tenggara Sdn Bhd had complied with the requirements as stated in paragraph 2 above, and irrespective of whether the quantum of their claim is disputed, in which event the provisions of Clause 21 of the same Rules would be applicable, the Letter of Release should already have been issued to enable Bandar Incorporated Development Sdn Bhd to be free to appoint another Architect and for that Architect to accept the appointment.

4. In view of the foregoing, it was decided that the requirement for a Letter of Release from Akitek Tenggara Sdn Bhd in this instance be waived and that Bandar Incorporated Development Sdn Bhd are now at liberty to appoint another Architect and for that Architect to accept the appointment.

Yours faithfully

Dato' Kington Loo
Chairman, Joint LAM/PAM Practice Committee

cc: Chong & Harcharan
Advocates & Solicitors
Suite 12A-01, 12A Floor
IGB Plaza
Jalan Kampar
50400 Kuala Lumpur
(Your ref : 21223.13344)

cc: Akitek Tenggara Sdn Bhd
Peti Surat GCB Plaza No. 20A
GCB Plaza
Ampang City
332A Jalan Ampang
50450 Kuala Lumpur

cc: President, LAM

cc: President, PAM

cc: Registrar, LAM

(supplementary appeal record (1) pages 220 and 221 refers)

It is clear to us from the above letter that LAM/PAM had made three important decisions. The first was that the appellants had the right to terminate the services of the respondent with or without assigning any reason. The second was that pursuant to cl. 17 of the Fourth Schedule (Rule 28) Part One – Conditions of Engagement of an Architect, the respondent was obliged to submit their accounts for the balance of fees due together with any other outstanding claims for reimbursable charges not later then 30 days from the date of expiry

of the notice of termination of the contract. The third was that the requirement for a letter of release from the respondent in this instance was waived and the appellants were at liberty to appoint another architect and it was for the new architect to accept the appointment.

In the High Court proceedings the respondent sought an order of *certiorari* to quash the LAM/PAM decision. This is abundantly clear to us from prayer (a) found in the respondent's notice of motion filed before the High Court:

> An order of Certiorari to remove unto this Court for the purpose of it being quashed the decision of the First Respondent made on its behalf on the 14th day of March, 1989 by the Joint Lembaga Akitek Malaysia/Pertubuhan, Akitek Malaysia Practice Committee as stated in the said Committee's letter dated the 15th day of March, 1989, addressed to the Applicant's Solicitors Messrs Christina Chia & Partners;

We also found that the respondent had, in its statement filed pursuant to O. 53 r. 1(2) of the Rules of High Court 1980 in support of the respondent's *certiorari* proceedings, challenged the LAM/PAM decision concerning the issue of termination of the respondent's services under the contract. In para. 3 of the statement the respondent had stated as follows:

> The grounds upon which the relief is sought are as follows:
>
> The Joint Lembaga Akitek Malaysia/Pertubuhan Akitek Malaysia Practice Committee was in law not properly constituted and, accordingly acted in excess of or without jurisdiction;
>
> The said Practice Committee was wrong in law in holding that the engagement of the applicant as the second respondent's Architects/Consultants was validly terminated by the second respondent;
>
> The said Practice Committee failed to consider or sufficiently to consider or misdirected itself on issues relevant to its decisions, namely:
>
> that the purported termination, having been made without proper notice (as required by the Architects Rules, 1973) was wrongful;
>
> (supplementary record of appeal (1) at page 55 refers).

The High Court granted the respondent an order of *certiorari* to quash the LAM/PAM decision. The High Court had in the grounds of judgment dealt with the issue of the termination of the respondent as evidenced in the following passages of the judgment:

Pendapat/Alasan:

Pendapat saya adalah:

1. Jawatankuasa dan Lembaga Arkitek Malaysia tidak ada bidangkuasa untuk mengenepikan (waive) peruntukan surat perlepasan yang dimaktubkan oleh kaedah 10 Kaedah-Kaedah Arkitek 1973…

2. Responden kedua telah tidak menamatkan perjanjiannya dengan pemohon. Untuk menamatkan perjanjian itu notis yang dikehendaki ialah selama enam puloh hari di bawah kaedah 16, Keadah-kaedah Arkitek 1973. Surat-surat responden kedua kepada pemohon bukanlah notis penamatan yang sempurna di bawah undang-undang. Oleh itu Lembaga dan Jawatankuasa telah membuat anggapan undang-undang yang salah apabila mereka memutuskan bahawa surat-surat itu adalah notis penamatan perkhidmatan pemohon...

Keputusan:

Atas alasan-alasan yang saya nyatakan tadi, saya dapati bahawa responden pertama telah membuat keputusan di luar bidangkuasanya, dan keputusan itu dibuat tanpa mengikuti kehendak-kehendak rukun keadilan asasi. Saya benarkan permohonan pemohon untuk mendapat perintah Certiorari membatalkan keputusan responden pertama seperti yang dipohon dalam perenggan (a) Notis Usul pemohon bertarikh 10.6.89. Saya juga mengarah kos permohonan ini dibayar oleh kesemua responden.

(suplementary record of appeal (c) (1) at pages 440 to 442 refers)

LAM/PAM being dissatisfied with the High Court Order then appealed to the Supreme Court. The Supreme Court (comprising of YAA Tun Dato' Abdul Hamid bin Hj Omar LP, Dato Ajaib Singh SCJ and Dato Hj Mohd Jemuri bin Serjan SCJ) unanimously allowed the appeal of LAM/PAM and set aside the High Court Order. We have carefully scrutinised the appeal record before the Supreme Court which is found in the supplementary appeal record. We hold that the issue of the validity of the appellants' termination of the respondent's services under the contract was considered and determined by the High Court and the Supreme Court.

The effect of the Supreme Court Order was that the LAM/PAM decision was restored and was hence valid and binding on the parties. The Supreme Court Order had in fact upheld and affirmed the LAM/PAM decision and is binding on all the parties including the appellants before us. We therefore reject the respondent's submission that the Supreme Court Order only dealt with the issue of the letter of release and did not deal with the issue whether the appellants had the right to terminate the respondent's services under the contract.

The trial judge had in his grounds of judgment stated that the appellants had submitted that the issue of the termination of the contract was already dealt with by the Supreme Court Order and the issue was *res judicata* (record of appeal volume 1 at p. 32). However, the trial judge did not deal with this critical issue before arriving at his finding. We are aware that the appeal record before the Supreme Court which was made available to us in the supplementary appeal records was not available to the trial judge. The failure of the judge to deal with the issue of the Supreme Court Order and the doctrine of *res judicata* was a serious misdirection that justifies our appellate intervention.

Having examined the effect of the Supreme Court Order, it is clear to us that the three decisions made by LAM/PAM have been conclusively adjudicated and decided with finality by the Supreme Court. The matter is now clearly *res judicata* and it cannot be re-opened and re-litigated by the parties or their privies. It is in the public interest that there should be finality in litigation and the sanctity and validity of the Supreme Court Order being the decision of the highest court in our country must be respected and obeyed by all other Courts. In *Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783 at p. 791 the Supreme Court held that:

> What is *res judicata*? It simply means a matter adjudged, and its significance lies in its effect of creating an estoppel *per rem judicatum*. When a matter between two parties has been adjudicated by a court of competent jurisdiction, the parties and their privies are not permitted to litigate once more the *res judicata,* because the judgment becomes the truth between such parties, or in other words, the parties should accept it as the truth; *res judicata pro veritate accipitur*. The public policy of the law is that, it is in the public interest that there should be finality in litigation – *interest rei publicae ut sit finis litium*. It is only just that no one ought to be vexed twice for the same cause of action – *nemo debet bis vexari pro eadem causa.*

In the case of *Co-operative Central Bank Ltd v. Feyen Development Sdn Bhd* [1997] 2 MLJ 829 at p. 830 under headnote (1) the Federal Court held as follows:

> It was necessary for each lower tier to accept loyally the decision of the higher tiers and chaotic consequences would follow should the lower tier fail in this duty. It was therefore not open to an intermediate court of appeal, such as the Court of Appeal in this country, to disregard a judgment of a final court of appeal such as the Federal Court on the ground that it was given *per incuriam.*

For the reasons adumbrated above, we therefore set aside the finding of the trial judge that the appellants termination of the respondent was unlawful as the respondent was not in breach of any of the terms of the contract.

We are clearly bound by the Supreme Court Order which upheld and affirmed the LAM/PAM decision. In the light of the Supreme Court Order we do not find it necessary to deal with the various common law cases referred to in the High Court judgment and the cases cited before us by counsel for the parties. We also find it unnecessary to deal with the submission as to whether the project was aborted, abandoned or delayed indefinitely.

Second Issue

What is the amount of damages due to the respondent?

We now deal with the second issue. The respondent had in its re-amended statement of claim re-re-dated 28 April 1997 claimed against the first appellant:

(a) the said sum of RM7,705,382;

(b) damages for breach of contract and/or a reasonable sum for work done amounting to RM2,006,373 in the alternative;

(c) such further and other relief; and

(d) cost of this action.

(record of appeal vol. 1 at p. 111)

The respondent's claim for the sum of RM7,705,382 was premised on the basis that if the said contract was not terminated on 1 November 1988, the respondent would have earned the said sum for the entire completion of the whole project. The respondent computed that the total fees expected to be earned under the contract would have been RM9,476,688. The respondent then deducted the architectural costs of remaining works as at the date of termination amounting to RM1,141,306. After deducting the sum of RM630,000 which the respondent had already received from the appellants, the respondent claimed loss and damage of RM7,705,382.

The principal basis upon which the trial judge awarded the sum of RM7,705,382 as losses suffered or the respondent's loss of profits was based on his finding that the contract was unlawfully terminated and that it was an entire contract. In the light of our interpretation and finding that the Supreme Court Order had already dealt with the issue of the validity of the termination of the contract, the learned judge's basis and foundation for the award of damages or loss of profits of RM7,705,382 cannot be sustained in law.

We therefore hold, with respect, that the trial judge had acted on a wrong principle or had made an entirely erroneous estimate of the damages. We therefore set aside the award of damages of RM7,705,382 made by the trial judge. The principles upon which an appellate court would be justified in interfering by reassessment of the damages have been succinctly formulated and settled in the following two cases. In the case of *Mahmod bin Kailan v. Goh Seng Choon & Anor* [1976] 2 MLJ 239 at p. 240 Tun Suffian LP in delivering the judgment of the Federal Court held as follows:

> The principle upon which we can interfere with the award has been stated by Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd* as follows:
>
> > Where the award is that of the judge alone, the appeal is by way of rehearing on damages as on all other issues, but as there is generally so much room for individual choice so that the assessment of damages is more like an exercise of discretion than an ordinary act of decision, the appellate court is particularly slow to reverse the trial judge on a question of the amount of damages. It is difficult to lay down any precise rule which will cover all cases, but a good general guide is given by Greer LJ in *Flint v. Lovell.* In effect the court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency.
>
> > The questions here therefore are – has the learned trial judge acted on a wrong principle of law or has he misapprehended the facts or has he made a wholly erroneous estimate of the damage suffered?

Further in the case of *Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn Bhd* [1994] 3 MLJ 777 at p. 799 Tan Sri Edgar Joseph Jr FCJ in delivering the judgment of the Federal Court held as follows:

> We need hardly add that in considering this appeal, and in particular, the grounds upon which an appellate court would be justified in interfering by assessment of the damages, we have reminded ourselves of what Greer LJ had said in *Flint v. Lovell* [1935] 1 KB 354 at p 360. He said:
>
> > … this court will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.

> In other words, the two situations in which an appellate court would be justified in interfering by reassessment of the damages would be where the trial judge has acted on a wrong principle or has made an entirely erroneous estimate of the damages.

We now consider whether the respondent should be awarded any damages upon termination of their services. As we have stated earlier, the respondent had as alternative to damages for breach of contract claimed for work done in the sum of RM2,006,373. The particulars of this claim have been pleaded by the respondent in para. 14 of the re-amended statement of claim as follows:

> Particulars of work done upon termination
>
> | | |
> |---|---|
> | Work done in Schematic Design Phase (15% of Total Architect Fees) | RM1,421,503 |
> | Work done in Design Development Phase (35% of Total Architect Fees for Blocks 1,5,7,8,17,18, 19 and the infrastructure) | RM 854,422 |
> | Work done in Contract Documentation Phase (25% of Total Architect Fees for Block 1 and the infrastructure) | RM 128,969 |
> | Amendments due to changes in instructions for Block 1 | RM 221,463 |
> | Printing Charges | RM 10,016 |
> | Total Fees Due | RM2,636,373 |
> | Less: Fees Paid | RM 630,000 |
> | AMOUNT DUE | RM2,006,373 |

The respondent's counsel had also repeated the same particulars in his written submission in the High Court below dated 9 October 1998 preceding them with the following paragraph:

> 10.1 It is submitted that as at the date of the Defendant's unlawful termination of the Plaintiff's services the Plaintiff had completed works amounting to RM2,636,373.00. Taking into account the deduction there from of the payment of the sum of RM630,000.00 received by the Plaintiff from the Defendant todate a sum of RM2,003,373.00 is due and payable by the Defendant to the Plaintiff.
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> (appeal record volume 2 pages 471)

Before us, the appellants' counsel made a fair concession that irrespective of whether the termination of the respondent's services under the contract was lawful or not, the respondent was entitled to be paid for work done up to the date of the said termination. He submitted that at all material times, from the date of the termination of the contract on 1 November 1988 up to the first day of trial on 16 April 1997, that is over a period of about nine years, the respondent had throughout maintained that the actual amount of damages due from the appellants to the respondent was the sum of RM2,006,373, which was for work done up to the date of the termination.

In the light of our finding that the Supreme Court Order had determined that the appellants had the right to terminate the respondent's services with or without assigning any reason, the respondent is only entitled to claim a reasonable charge for the work done up till the date of termination. We are supported in this finding by the fact that the respondent was paid his monthly professional fees of RM20,000 and further fees progressively for actual work done. This was the system and pattern of payment of the respondent's professional fees under the said contract. We have carefully examined the contract and it is our finding that the respondent was engaged as a professional firm of architects to render professional architectural services to the appellants for the project. The contract only refers to the payment of fees.

Accordingly we hold that the respondent is entitled to be paid all the fees for work done up to the date of termination as prayed for by the respondent as alternative to prayer (b) in the re-amended statement of claim and in para. 10.1 of the respondent's written submission in the court below. That sum claimed by the respondent was RM2,006,373. There is no dispute between the parties that pursuant to the judgment of the High Court the appellants had on 15 July 1999 paid the respondent the sum of RM2,000,000. In the result the appellants were ordered to pay the respondent the balance sum of RM6,373 together with interest thereon at the rate of 8% per annum from 11 May 1999 till the date of full realization. We also ordered that the appellants pay the respondent interest at the rate of 8% per annum on the sum of RM2 million from 11 May 1999 till the date when this sum was paid to the respondent, ie, 15 July 1999. We also awarded costs to the appellants both here and in the court below.